United Nations

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 992

Case No. 985: AYOUB

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mayer Gabay, President; Mr. Kevin Haugh, Vice-President; Ms. Brigitte Stern;

Whereas, on 14 September 1999, Munib Tewfik Ayoub, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 31 January 2000, the Applicant, after making the necessary corrections, again filed an Application in which he requested, in accordance with article 11 of the Statute of the Tribunal, the revision of Judgement No. 889 rendered by the Tribunal on 4 August 1998;

Whereas the Application contained pleas requesting the Tribunal:

"1. (a) To order the Respondent to pay the Applicant his full entitlement to retirement benefits ([s]taff [r]ule 109.2) which he lost because of the Respondent's termination measure of 16 [December] 1995 against the Applicant, the measure which UNAT's Judgement [N]o. 889 of [4] [August] 1998 has [annulled].

(b) This entitlement of retirement benefits amounts to 20 months [net base salary at the rate in effect] he received in June 1995.

2. To order the Respondent to pay to the Applicant the interest on these retirement benefits from the date of [termination of] his services by the Respondent on 16 [December] 1995 when the Applicant should have received them, to the date he is issued these benefits. The interest is to be calculated on UNRWA interest rates.

3. To order the Respondent to pay the Applicant the amount of $3,000 (U.S.) for [counselling] fees, [secretarial] and other expenses."

Whereas the Respondent filed his Answer on 31 July 2000;

Whereas the facts in the case were set forth in Judgement No. 889.

Whereas the Applicant's principal contention is:

The Applicant should receive retirement benefits of 20 months net base salary. As the Tribunal ordered the rescission of his termination, he is entitled to retirement benefits of 30 months salary rather than the termination indemnity of 10.5 months salary he received.

Whereas the Respondent's principal contentions are:

1. The application is not receivable by the Tribunal. The issues set forth in the Application have "not been the subject of consideration and review by the Respondent's internal justice system".

2. The application is not an application for revision in accordance with article 11.

3. Even if the Application were to be considered as an application for revision, it is time-barred.

The Tribunal, having deliberated from 26 June to 13 July 2001, now pronounces the following judgement:

I. Following Judgement No. 889, dated 4 August 1998, the Applicant filed a new Application requesting, *inter alia*, full retirement benefits. In Judgement No. 889, the Tribunal ordered rescission of the decision to terminate the Applicant's appointment. The Tribunal further ordered that the Applicant be reinstated, or, alternatively, if the Commissioner-General decided in the interest of the Agency that the Applicant should be compensated without further action being taken in the case, that he be paid two years net base salary. The Applicant was paid two years net base salary. According to the Applicant, in view of the Tribunal's judgement, he is now entitled to a Retirement Benefit instead of the Termination Indemnity paid to him in 1995 on the termination of his appointment.

II. Under the applicable Regulations and Rules, internal remedies must be exhausted before an applicant can seek redress from the Tribunal. The Tribunal notes that the Applicant has not submitted the instant matter about additional compensation to the Respondent, or to the JAB as stipulated under article 7 of the Statute. Although the Applicant asserts that he has the right to bring this application directly to the Tribunal because it arises as a natural consequence of the Tribunal's orders in Judgement No. 889, established Tribunal jurisprudence mandates otherwise. The Tribunal has consistently held that it cannot consider questions that were not raised before the JAB. (See Judgements No. 519, *Kofi* (1991); and No. 555, *Selamawit Makonnen* (1992).) It is clear that applicants can seek redress from the Tribunal only as a last resort. This new Application, as such, is not receivable by the Tribunal because it has not been the subject of consideration and review by the Agency's internal justice system.

III. The Tribunal notes that, in effect, although the Applicant states otherwise, the Applicant's request could be considered a request for revision of Judgement No. 889, under article 11 of the Statute of the Tribunal, or possibly a request for interpretation.

IV. Article 11 stipulates that an applicant may apply for a revision of a judgement on the basis of the discovery:

> "... of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence. The application must be made within thirty days of the discovery of the fact and within one year of the date of the judgement."

The Tribunal notes that the Applicant first attempted to file an application concerning receipt of retirement benefits in September 1999, and filed his formal Application in January 2000. It also notes that the Respondent's decision to compensate the Applicant pursuant to Judgement No. 889 was communicated to the Applicant on 17 December 1998. Thus, a request for revision in the instant application would be time-barred under article 11. In any event, the Applicant makes no mention of a newly discovered fact, but requests the Tribunal to rule on his separation entitlements. In the view of the Tribunal, this request cannot be considered a valid request for revision.

V. The Statute of the Tribunal does not contain an express provision relating to the interpretation of judgements. However, the International Court of Justice in a 1954 advisory opinion held that competence to interpret is inherent in the judicial function, which it declared the Tribunal to possess. Subsequently the Tribunal itself held that it possesses the competence to consider a request for the interpretation of a judgement, citing as authority the 1954 advisory opinion of the International Court of Justice. (Judgement No. 61, *Crawford and Others* (1955).) Also, in Judgement No. 434, *Al-Ali* (1998) the threshold question before the Tribunal was whether an application could properly be characterized as a request for an interpretation of the Tribunal's final judgement, in which case it would be within its competence, or whether the application sought relief beyond that judgement on the basis of subsequent events, in which case it would not be within the competence of the Tribunal under article 7 of its Statute.

VI. The Applicant argues that because the initial decision to terminate his appointment was rescinded, he must be presumed to have had continuous service for thirty years, and that, therefore, he is entitled to a Retirement Benefit. As retirement benefits are calculated at one month of net base

salary per year of service, he seeks additional compensation of twenty months (initially he claimed 17 months).

The Tribunal's position in Judgement No. 889 is clear and unambiguous. The Tribunal provided the Commissioner-General with a choice to be exercised in the interest of the Agency. Either the Applicant was to be reinstated with full salary for the period since his separation or, if within 30 days the Commissioner-General decided that the Applicant would not be reinstated but instead compensated without further action being taken in his case, a fixed amount of compensation was to be paid. The Commissioner-General chose to compensate the Applicant "without further action being taken in his case", as contemplated in the third of the Tribunal's orders. By choosing this option the Commissioner-General decided not to reinstate the Applicant. Thus, the Applicant was not restored to his original position and was not entitled to receive "full payment of salary and emoluments from the date of his separation from service", including retirement benefits.

VII. For the foregoing reasons, the Tribunal rejects the Application in its entirety.

(Signatures)

Mayer GABAY
President

Kevin HAUGH
Second Vice-President

Brigitte STERN
Member

Geneva, 13 July 2001

Maritza STRUYVENBERG
Executive Secretary